

### REMARKS/ARGUMENTS

Responsive to the Office Action mailed December 12, 2004:

#### I. NON-PRIOR ART MATTERS

The Office Action objected to claim 1, citing improper usage of linking terms. Applicant hereby cancels claim 1.

#### II. PRIOR ART MATTERS

The Office Action rejected claims 1-11 under 35 USC 103(a) as being unpatentable over Douwens et al. Applicant respectfully traverses the rejection.

Claims 1-11 are cancelled herein. New claims 12-23 are submitted herein and are patentable over the cited prior art.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.<sup>1</sup> If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.<sup>2</sup>

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.<sup>3</sup>

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

1. The reference does not teach or suggest all the claim limitations.

As to claim 12, Douwens et al. (hereinafter "Douwens") does not teach or suggest a first tank that contains a water-based fluid, a second tank containing a first reagent (A), a

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<sup>1</sup>MPEP Sec. 2142.

<sup>2</sup> Id.

<sup>3</sup>Id. (emphasis supplied)

third tank containing a second reagent (B); a heat exchanger, comprised of an envelope about the second tank; a steam discharge outlet, and an air conditioning system, wherein the first reagent and the second reagent combine to create a thermochemical reaction in the second tank of the heat exchanger, converting the water-based fluid held in the envelope into steam, which is thereafter released into the steam discharge outlet connected to the air conditioning system.

Claim 12 is therefore allowable.

Claims 13-23 contain additional elements or limitations beyond allowable claim 12 and are also allowable.

2. There is no suggestion to combine the references.

Further with respect to claim 14, the Office Action states that Canadian Patent Nos. 1,010,331 and 1,124,140, the first corresponding with cited U.S. Patent No. 3,976,049, in combination with Douwens, render the present invention obvious to one having ordinary skill in the art. The fact that a prior art device could be modified to produce the claimed invention is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification.<sup>4</sup> Both the suggestion and the expectation of the success must be founded in the prior art, not in the applicant's disclosure.<sup>5</sup> When obviousness is based on a single reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.<sup>6</sup>

There is no suggestion to combine if a reference teaches away from its combination with another source. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant.<sup>7</sup>

The combined references do not teach or suggest any of the claim limitations.

As to claim 14, the references do not teach:

The steam generator in claim 12, wherein the first reagent is a composite of calcium chloride and expanded natural graphite and the second reagent is an ammonium gas.

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<sup>4</sup> *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984)

<sup>5</sup> *In re Dow Chemical Co.*, 837 F.2d 469 (Fed. Cir. 1988)

<sup>6</sup> *In re Kotzab*, 208 F.3d 1352 (Fed. Cir. 2000)

<sup>7</sup> *Tec Air v. Denso Mfg. Michigan, Inc.*, 192 F.3d 1353 (Fed. Cir. 1999)

Yamaschita et al. (US 3,976,049 and Canadian Patent 1,010,331, hereinafter "Yamaschita") does not expressly disclose the use of a reagent (A) comprising a composite of calcium chloride and expanded natural graphite, or a reagent (B) comprising an ammonium gas. Yamaschita claims "said exothermic composition which is activated on contact with air being selected from the group consisting of iron powder, a chloride and a sulfate a metal having an ionization tendency greater than iron *and* active carbon filled in said bag." Further, Yamaschita discloses a singular unified heating structure, which operates as a closed, self-contained *heating* system. The present invention does not disclose, teach or suggest such limitations.

3. The references are non-analogous prior art.

Furthermore, as to all claims, Douwens and Dubois et al (Canadian Patent 1,124,140, hereinafter "Dubois") are non-analogous prior art. To rely on a reference under 35 USC 103, it must be prior art.<sup>8</sup> "In order to rely on a reference as the basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor is concerned."<sup>9</sup>

Douwens and Dubois are clearly not in the field of Applicant's endeavor, as they are not even in the air conditioning and/or steam generator art. Dubois is in the field of marine propulsion devices and Douwens is in the field of breathing devices.

Furthermore, neither Douwens nor Dubois are reasonably pertinent to the particular problem with which the inventor was concerned. Applicant was concerned with the problem of providing humidification of air in an air conditioning system. Douwens is concerned with the problem of providing a portable, inhalation rewarming apparatus for the treatment of hypothermia. Dubois is concerned with the problem of throttle control for a marine propulsion device. There is no way that either Douwens or Dubois would have come to Applicant's attention.

With regards to amended claim 19, Douwens does not teach or suggest a pressure safety valve or keeping fluid under pressure, as is taught and suggested in the present invention. Amended claim 19 contains additional elements or limitations beyond allowable claim 1 and is also allowable.

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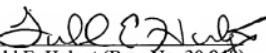
<sup>8</sup> MPEP 2141.01(a)

<sup>9</sup> id.

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

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